

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

77-2085

To be argued by
MARTIN E. GOTKIN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, EX REL.
WALTER WOLFRATH,

Petitioner-Appellee,

- against -

J. EDWIN LA VALLEE, Superintendent,
Clinton Correctional Facility,

Respondent-Appellant.

ON APPEAL FROM AN ORDER OF THE
UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR PETITIONER-APPELLEE

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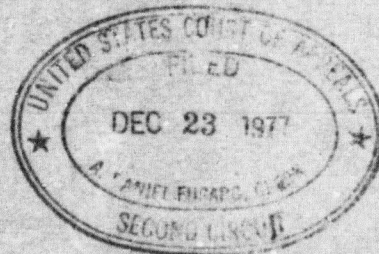


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- against -

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Respondent-Appellant

BRIEF FOR PETITIONER-APPELLEE

PRELIMINARY STATEMENT

This is an appeal from an order of the United States District Court for the Southern District of New York (Duffy, J.) dated July 27, 1977, ordering that the petitioner, who commenced a federal habeas corpus proceeding, be released from custody unless the state court promptly grants him a new trial and restores him to pre-trial status. The District Court stayed its order pending appeal to this Court.

STATEMENT OF FACTS AND PRIOR
PROCEEDINGS

1. THE ARREST

The defendant, in custody at the Bellevue Prison Ward in connection with a criminal charge other than that on which his present conviction is premised, was arrested on the present charges - pursuant to an arrest warrant - on November 14, 1966, and was charged with robbing Mrs. Marion Sehnert and others on November 2, 1966.

2. THE INDICTMENT

On March 13, 1967, the defendant was arraigned on an eight count indictment charging three counts of robbery in the first degree, one count of attempted robbery in the first degree, one count of grand larceny in the first degree, one count of assault in the second degree, one of burglary in the third degree, and one of criminally possessing a loaded firearm as a felony. The counts alleged that the defendant, armed with a loaded pistol, on November 2, 1966, robbed Don Sehnert, Marion Sehnert, and Donald M. Greenwald, and attempted to rob Ronald Sehnert.

(All counts, the evidence developed, arose out of the defendant's alleged conduct, on November 2, 1966, when it is claimed he "burst through" the front dooor of the Don Lee Studio [hair and scalp treatment specialists], and - at gunpoint - held up the proprietors, their son, and one customer.)

3. THE GUILTY PLEA, SENTENCE AND COMMITMENT THAT WERE VACATED

On June 21, 1967, the defendant pleaded guilty to the crime of robbery in the third degree, under the indictment's first count, to cover the entire indictment. At the time the plea was entered, the defendant, through counsel, expressly reserved the right to withdraw that plea if it developed that he was a fourth felony offender.

On November 3, 1967, the Assistant District Attorney moved to void the court's earlier sentence of five to ten years in State Prison on information and the court rescinded the earlier sentence.

In light of the decision to prosecute Wolfrath as a fourth offender, he was permitted to withdraw his earlier guilty plea, and a not guilty plea was entered.

4. PROCEEDINGS PRELIMINARY TO TRIAL -

THE HUNTLEY HEARING

On February 27, 1968 out of the hearing of the jury panel, a Huntley hearing (A65)* was commenced on the admissibility of a statement purportedly made by the defendant. In its course, this hearing expanded to include the circumstances under which the defendant was identified by the complaining witness, and to consider whether those circumstances violated the principles laid down in Wade, Gilbert and Stovall cases. This hearing was held before the trial judge, Hon. George Postel, who, at the hearing's conclusion, on March 6, 1968, denied the relief sought.

The hearing testimony came from three police witnesses (Patrolman James Emburey and Detectives Leonard Spano and John Hanford), and from two of the complainants (Mrs. Marion Sehnert and her husband Don Sehnert). The witnesses developed that the defendant was first interviewed by police on November 5, 1966 at 1:40 a.m. at St. Vincent's Hospital (R 47-48)** to which hospital he had gone with a wounded forearm and a story that he was injured as the victim

*Figures in parentheses preceded by "A" refer to pages in joint appendix

**Some of the pages referred to in this summary are not reprinted in the Appendix. Reference in such instances, therefore, are made to the typed transcript of the Huntley hearing and trial, and are preceded by the letter "R". The entire trial transcript including the Huntley hearing are part of the record on appeal.

of a hold-up, a story he revised on further police questioning, at about 5:00 a.m., conceding he had committed a hold-up and had been wounded when his victim resisted (R 53-60). Having testified he gave the defendant the appropriate Miranda warnings, Det. Spano added that the defendant volunteered that a few days earlier he had held up a "beauty salon" (R60-65). The detective stated at the time he questioned the defendant, he was unaware that the defendant had been operated on, or was sedated (R65-66). As to the Miranda warnings, the officer stated he received no response to his advice that if the defendant could not afford an attorney, one would be appointed to represent him (R68-75).

The following day, November 6, 1966, after having again allegedly been given Miranda warnings, the defendant was questioned at Bellevue Hospital and - after stating he wanted to say what had happened - stated "I did it" when questioned concerning the November 2, 1966 Don-Lee Studio hold-up (R8-16). At the time of this questioning, the officer was unaware whether the defendant was under medication, pain-killers, or barbiturates, saw no hypodermics, and was unaware of the defendant's pain. (R25-26, 40-46)

The Sehnerts testified that at Bellevue on November 6, 1966, they heard the defendant say that he had done it, and that "those [the Sehnerts] are the people"; that before they approached they saw the detective and the defendant talking together (R102, 107-08, 120, 131, 138-46).

The St. Vincent's and Bellevue Hospital records showed that on the days of the police questioning and identifications, the defendant had been given demerol and nembutal repeatedly; that he had a comminuted fracture of the ulna and that his arm had been ordered kept elevated (R180-85).

5. THE TRIAL

On March 12, 1968 the jurors found the defendant guilty on all four of the counts that were submitted to them by the Court (robbery in the first degree (two counts); burglary in the third degree and criminal possession of a weapon as a felony).

Mrs. Marion Sehnert and Don Sehnert testified, substantially similarly, that on November 2, 1966, the defendant burst into their "studio", stated it was a stick-up, and lined the Sehnerts and their son and a customer (Donald Greenwald) against a wall; he then ransacked desk drawers and took money from those present, warned all against using the phone, and locked the door on leaving (R212 et seq; R414 et seq.) On cross-examination, testimony was adduced that Mrs. Sehnert had understated the height of the assailant (R 261-63, 334, 339-40). The defendant, at Bellevue Hospital on November 6, 1966, said "I did it" when in the Sehnerts' presence (R299-300).

Mrs. Sehnert also stated that, in 1966, the studio had briefly employed one Robert Wyatt (R 228).

The two other non-police witnesses to the crime who had not been involved in the hospital identification were not called.

Patrolman John Emburey testified that, on November 5, 1966 at St. Vincent's Hospital, the defendant stated he had been wounded when he struggled to resist someone who was attempting to hold him up (R 318). The officer further stated that, that same morning, he arrested Laura and Robert Wyatt, who at the time were in a vehicle, and that he recovered a gun from that vehicle (R 319-24). Detective Leonard Spano stated that the defendant identified the gun (that gun that Emburey had obtained from the Wyatts' car) as the one he had used in the Don-Lee Studio hold-up, and that the defendant admitted the falsity of his story to Ptl. Emburey concerning the mode of his wounding (R 349-52). Detective John Hanford testified that on November 6, 1966, at Bellevue Hospital, the defendant stated that Wyatt had given him the gun and had set up the Don-Lee Studio job (R 387-88).

It was stipulated that testimony would demonstrate the gun to be in working order (R 449-50).

6. THE SENTENCE AND STATE AND FEDERAL APPEALS

On March 14, 1968 the petitioner was sentenced to State Prison as a fourth felony offender for a term of sixteen years to life imprisonment.

That judgment was affirmed unanimously by the Appellate Division, First Department without opinion on May 29, 1969 (32 A.D. 2d 742).

On appeal from the Appellate Division, First Department, the Court of Appeals affirmed the conviction in a unanimous decision dated April 9, 1970 (26 N.Y. 2d 943).

Wolfrath's petition for a writ of habeas corpus was denied by the United States District Court N.D.N.Y. (Port, J.) my memorandum decision and order dated January 4, 1974 and his application for a certificate of probable cause was similarly denied on April 3, 1975.

The Second Circuit Court of Appeals, by order dated September 3, 1975, denied a motion for a certificate of probable cause but remanded the appellant's involuntary confession claim for a hearing. The matter was transferred to the District Court for the Southern District of New York in accordance with the remand of the Court of Appeals by order dated September 19, 1975 (Port, J.) The case was assigned to Judge Duffy and CJA counsel was appointed for petitioner.

THE PROCEEDINGS IN THE DISTRICT COURT

Hearings on this matter were held on four separate occasions before Judge Duffy.¹ At the first hearing held on August 5, 1976, the petitioner testified and there was marked into evidence the complete trial transcript of the State Court trial as well as the hospital records of St. Vincent's (A284) and Bellevue (A298).

The Court after receiving memorandum from counsel subsequently rendered a memorandum and order dated June 18, 1977 wherein findings of fact and conclusions of law were made (A44).

The Court concluded that "only after medical evidence is received can this court assess the totality of the circumstances and determine if the confession was voluntary."

THE MEDICAL EVIDENCE HEARING

On July 21, 1977 a hearing was held (All) wherein the petitioner called as his only witness Dr. Charles P. Felton² the Associate Director of Medicine at Harlem Hospital; director of the division of pulmonary diseases; associate professor of clinical medicine at the College of Physicians & Surgeons at Columbia University; and consultant attending physician to the Drug Addiction Service of Harlem Hospital Center.

1 Only at two of these hearings held on 8/5/76 and 7/21/77 was evidence taken. At the other two hearings on 12/6/76 and 12/7/76 only counsel and the Court were present.

2. CJA counsel was indeed fortunate to obtain the services under CJA of such a distinguished and impeccable witness as Doctor Felton (See qualifications A12-A14)

After testifying that he reviewed Wolfrath's medical records at both St. Vincent's and Bellevue Hospitals and the Huntley hearings of the trial and the prior proceedings of the instant proceeding, Dr. Felton testified as follows:

1. Wolfrath was admitted to St. Vincent's at 1:29 A.M.
2. At 1:35 A.M. 10 milligrams of morphine sulfate was administered intramuscularly, together with a dosage of tetanus toxide.
3. At 3:30 A.M. a saline solution, including dextrose and water, was administered intravenously along with a dosage of penicillin and streptomycin.
4. At 4 A.M. 75 milligrams of demerol and 200 milligrams of sodium luminal were given to Wolfrath.
5. Sometime after 4 A.M. after Wolfrath was given dosages of pain killers and relxants the operation took place.
6. At approximately 5 A.M. after the operation was completed Detective Spano interviewed Wolfrath.

Based on the above Dr. Felton concluded that:

A. The 10 milligrams of morphine sulfide administered at 1:35 A.M. alone would have created drowsiness and clouding of Wofrath's mental abilities at 5 A.M..

B. Each of the drugs administered to Wolfrath is known to cause decreased Cerebration.

C. When the morphine sulfite, demerol and sodium luminal reacted with each other together with the alcohol which Wolfrath had consumed, a "fugue-like state" in the mind of the patient would be created and "would induce a euphoric feeling of invulnerability," and a person in such a state is not capable of making a serious decision. Thus the following testimony took place (A26-28).

"Q. Dr. Felton, given the factual situation that I just gave you, the admission at 1:25 a.m., with a gunshot wound, the administration of the drugs of 10 milligrams of morphine-sulfate at 1:35 a.m., penicillin at 3:30 a.m., the 75 milligrams of Demerol at 4:00 a.m., the 200 milligrams of sodium luminal at 4:00 a.m., the operation sometime between four and five a.m., would you say that a person who was questioned at approximately five a.m. of that morning, given the drugs that were administered, the fact of the trauma of the gunshot wound, the fact of the operation itself, would you say that that person at approximately five a.m. in the morning knew what he was doing, was in control of his faculties, and was capable of making an intelligent and reasoned judgment?

A. I would have to answer the question by saying in my carefully considered opinion that the person did not fully what he was he doing and that he would not be in full command of his wits because we are speaking of an individual here who is a nonuser or a non-tolerant user of these drugs.

Q. Would you say then that any statement made at approximately five a.m. was, in effect, involuntary?

MR. RYAN: I object to the form of the question.

THE COURT: You may answer.

A. In answer to your question, the drugs that we are speaking about are known to cause a dreamlike sensation or impression in the individual. Demerol alone would cause this fugue-like state, and here we have a combination of several drugs, all of which are capable of

creating such an effect. We have several drugs on board in this individual: sodium luminal, morphine-sulfate, Demerol, and alcohol to some extent, to some unknown extent here. These four drugs working in synergism would potentiate the effect so that you would have an additive effect of the several drugs in that this would -- since each one of these drugs is known pharmaceutically, medically, to cause mental clouding, some decrease in cerebration, etc., that I would say it would be anticipated that the individual would not be capable of making very serious decision because of euphoria that is associated with all of these drugs, very well-known euphoria that is associated, and we know that with euphoria comes a feeling of invulnerability; that the individual I think may have had a false sense of security about him, an unreal sense of security about him, and may have certainly made it easier for him or for anyone to extract a confession out of him at that time..

Does that answer your question?

THE COURT: It answers it as best as you can."

The respondent called no witnesses and offered no evidence. Judge Duffy concluded after the hearing ordering a new trial that "Wolfrath's statements in response to Detective Spano's questioning were not voluntary and should not have been admissible at trial" (A8).

POINT I

THE ALLEGED CONFESSION WAS PROPERLY
HELD TO BE INVOLUNTARY AND THEREFORE
INADMISSABLE.

A careful reading of respondent's argument under his Point I reveals the bottom line to be: because some 12 years have passed since the alleged robbery and the People would in all likelihood be unable to try the petitioner again Wolfrath should remain as a convicted felon and face the possibility of continued confinement.

This writer would make reference to Gates v. Henderson No. 76-2065 (2nd Cir., Jan. 12, 1977) wherein the majority commenting on the dissenting opinion which stated that the practical effect of granting habeas corpus relief and ordering a new trial in that case would have the effect of turning loose on society a felon serving a prison term of 20 years to life with the impossibility of retrying petitioner noted that:

"...As for setting free a 'convicted first degree murderer' after ten years, we were unaware that there was a statute of limitations on the exercise of constitutional rights."

The assertion that Dr. Felton's testimony was mere "speculation" is frivolous. His testimony was based on the evidence of the hospital records, the trial proceedings and the prior proceedings before Judge Duffy. Certainly based on Dr. Felton's experience and qualifications as an expert he was justified in drawing the inferences and reaching the conclusions which he did.

The petitioner has more than met its burden in challenging the voluntariness of the confession.

The case of Wainwright v. Sykes, (45 U.S. Law Week 4807) is inapposite to the instant case where Wolfrath did challenge the confession prior to trial.

Certainly when the testimony of Dr. Felton is considered it can be said that Wolfrath's confession was not the "offspring of reasoned choice", United States v. Mitchell, 322 U.S. 65, 68 (1944). See also Jackson v. Denno, 378 U.S. 368 (1964).

POINT II

THE FACTS OF THIS CASE MORE
THAN JUSTIFY THE APPLICATION
OF THE EXCLUSIONARY RULE

Respondent goes into a rather lengthy dissertation on the cases of Townsend v. Gain, 372 U.S. 293 (1962) and Jackson v. Denno, 378 U.S. 368 (1963) which also involved the use of drugs but reaches a conclusion that in those cases the exclusionary rule should be applied but not in the instant case. Petitioner disagrees. The Respondent concludes that excluding the confession here would not have the desired effect of curbing unlawful police conduct. Petitioner fails to see why curbing police questioning of a person under drugs, relaxants and sedation immediately after an operation is not desirable.

The cases of Lewis v. Henderson 520 F, 2d 896 (1976), Hayes v. Washington, 373 U.S. 503 (1963) and Haley v. Ohio 332 U.S. 596 (1948) are not in point since they did not involve the knowing waiver of Miranda rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1966).

POINT III

THE ERROR OF ADMITTING THE
PETITIONER'S CONFESSION AT
TRIAL WAS NOT HARMLESS AND
THE ONLY CURE IS THE GRANTING
OF A NEW TRIAL.

In Chapman v. California, 386 U.S. 18 (1967) that court held at page 24 that "before a federal constitutional error can be held harmless the Court must be able to declare a belief that it was harmless beyond a reasonable doubt." That Court further noted that "our prior cases have indicated that there are some constitutional rights so basic to a fair trial that their infraction can never be treated as harmless error. (page 23)

See also Payne v. Arkansas 356 U.S. 560 (1958) wherein that Court held that the admission over the accused's objection of a coerced confession as part of the evidence before the jury violates due process mandated by the 14th Amendment and violates the judgment of conviction, even though there may have been sufficient evidence apart from the confession to support a conviction.

The attempt by respondent to distinguish Payne from the instant case by stating that Payne involved a "gross violation of the accused constitutional rights" is rather novel. If a person's constitutional rights are violated, they are violated whether the violation is gross or small - the result is the same and the remedy must be the same; in this case, granting petitioner a new trial.

The cases of Milton v. Wainwright, 407 U.S. 371 (1972) and United States ex rel Moore v. Follette, 425 F. 2d 925 (1970) cert den. 90 S. Ct. 2189 (1970) cited by respondent are completely distinguishable from the case at bar. In both Milton and Moore the evidence of guilt was "overwhelming" and other valid confessions were introduced against those defendants. Indeed in Milton that court held that any possible error in the admission of the challenged confession was harmless beyond a reasonable doubt in light of three other unchallenged confessions and strong corroborative evidence of petitioner's guilt.

The case of United States v. Duvall, 537 F. 2d 15 (2nd Cir., 1976) cited by respondent is completely misapplied. That case concerned the activities of an assistant U.S. attorney at a pre-arraignment interview. In that case there was no issue of a knowing waiver of Miranda rights.

Respondent's main contention in his string of citations at page 28 is that assuming arguendo that the confession to Detective Spano was involuntary there is other "overwhelming" evidence of petitioner's guilt: to wit "two positive eyewitness identifications of petitioner, as well as a voluntary confession to Detective Hanford (and the Sehnerts) made at Bellevue Hospital" (Respondent's Brief, page 31).

The proof in this case of Walter Wolfrath's guilt of robbery (and of subordinate crimes) rests, it is submitted, not on "overwhelming evidence" but rather on two species of evidence, both of which are badly tainted; (i) the eyewitnesses identifications provided by Mr. and Mrs. Don Sehnert; and (ii) the defendant's own statements on November 5th and 6th, 1966 to the officers and in the Sehnerts' presence. Both species of evidence are tainted, the defense urges, because both the Sehnerts' initial identification of Wolfrath, and the questioning prior and concurrent thereto, took place under circumstances violative of rulings handed down by the United States Supreme Court in the trio of line-up cases of Wade v. U.S. 388 U.S. 218 (1967), Gilbert v. California, 388 U.S. 263 (1967), and Stovall v. Denno, 388 U.S. 293 (1967), and in the great case of Miranda v. Arizona, 384 U.S. 436(1966).

The indictment itself and the trial evidence show that three robberies were committed, and one attempted, on November 2, 1966 by the person who broke into the Don Lee Studios; at gunpoint he held up the proprietor and his wife and a customer (Donald M. Greenwald) and sought to take money from the proprietor's son Ronald. Hence there were four eyewitnesses to these robberies. But only two were called as trial witnesses. And significantly those two, Mr. and Mrs. Sehnert, were the only two of the four victims whom the police took to Bellevue Hospital on November 6, 1966 to look at Walter Wolfrath. Wolfrath at the time had no counsel, and - as will be more fully considered - was ill (he had been

operated upon the previous day) and sedated.

Before being taken to the hospital, the Sehnerts were told by a detective that they "had a man at Bellevue who was held in custody for the commission of some crime" (R120) and that "they would like us to come down and see, see if we could identify him, see if it might be the party that had held us up"(R128). There was no line-up and hence little if any possible ambiguity at the hospital as to who was the identification target; a police officer was with the defendant (R108) and Mr. Sehnert recollected Det. Hanford going down the hall and talking for several minutes with the man, who was sitting in a wheelchair, and who turned out to be Wolfrath, before the Sehnerts identified him (R136-37,146). At the time of identification, Det. Hanford said to the Sehnerts, in substance, " I want you to look at this man; tell me whether he is or is not the man that you say perpetrated the robbery" (R140-41). Purportedly Wolfrath, in the Sehnerts' presence, at the time of this "identification" said "I did it" (R299-300) and - indicating the Sehnerts - "Yes, those are the people" (R444-45) this being Mr. and Mrs. Sehnert's testimony before the trial jury.

Quite obviously, this was no objective line-up. The circumstances of the "identification" could hardly have been more pointedly designed to single out Wolfrath as the person whom the detectives aimed to have the Sehnerts identify. Yet here there were no emergency factors requiring

an immediate "bedside" identification. Wolfrath was, appropriately, in custody for his November 5, 1966 gun possession; identification by the victims of the November 2, 1966 robberies could readily have awaited the conclusion of his hospitalization when a more routine, and far more "anonymous" kind of line-up might have been arranged.

Although the Wade-Gilbert-Stovall cases were decided June 12, 1967, and specified that they were to affect "future cases which involve confrontations for identifications purposes conducted in the absence of counsel after this date" (Stovall, 388 U.S. at 296) and the Wolfrath identification took place prior thereto - on November 6, 1966 - this should not deprive Wolfrath of "due process" protections. In Stovall writing for the high Court's majority, Mr. Justice Brennan pointed out that while the Court limited the retroactive effect of the requirement of counsel at line-ups, "it remains open to all persons to allege and prove, as Stovall attempts to do in this case, that the confrontation resulted in such unfairness that it infringed his right to due process of law" (388 U.S. at 299).

This Bellevue confrontation, it is submitted, resulted in just such unfairness. In light of the full Wade-Gilbert-Stovall discussion of the way an improper initial identification can sow seeds of false certainty that may badly distort the trial identification made by an honest witness, the writer will not here belabor that psychological fact. It should be clear from what the Sehnerts were told before going to Bellevue, from what they observed at Bellevue before confronting Wolfrath there, from the circumstances of that confrontation, and then from what they heard Wolfrath (who was under sedation) say at the time of their identification, that Wolfrath was the man whom they were intended to identify; having done so, their trial testimony would - inevitably - be premised as much or more upon the hospital confrontation as upon the events of November 2, 1966.

The pre-trial combination Huntley and Stovall hearing - it is submitted - that was conducted by Judge Postel, failed to produce any proof, no less the required "clear and convincing proof", (People v. Ballott 20 N.Y. 2d 600 (1967)) that the Sehnerts' identification of Walter Wolfrath was premised solely upon their observations of their November 2, 1966 hospital observations of Wolfrath. Two robbery eyewitnesses (Donald M. Greenwald

and Robert Sehnert) untainted by the Bellevue "identification" were available and might have been called by the People in order to provide the "clear and convincing proof" required to demonstrate that it was not the faulty out-of-court identification that had indelibly poisoned the witnesses' abilities to thereafter premise an identification wholly upon the events of the hold-up. See also:

People v. Brown 20 NY 2d 238 (1967) cert. den. 390 U.S. 928 (1968)

People v. Ahmed, 20 NY 2d 958 (1967)

People v. Hill, 22 NY 2d 686 (1968).

Neither witness was produced nor was the absence of either accounted for. Nor were there any "imperative circumstances" (People v. Brown, Supra) necessitating the Bellevue procedure, and the procedure there followed was so suggestive and conducive to irreparable mistaken identification in the words of New York State's Court of Appeals in Brown - "as to amount to a denial of due process of law".

In addition the identification was the ultimate fruit of the tainted confession, to wit: that the confession to Detective Spano led to the Sehnerts appearing at Bellevue and identifying Wolfrath.

The citation by respondent of United States v. Bayer, 331 U.S. 532 (1946) at page 31 of his brief is in effect a concession by him that the so called "first confession" to Spano at St. Vincent's hospital was "bad". Bayer involved a court martial and a "second confession" some six months after the first. In Bayer none of the facts of an operation, drugs or hospitalization were present. In the instant case Wolfrath was questioned by Detective Hanford the very next day while still in the hospital following his operation.

It is submitted that Judge Duffy was correct when he stated in his opinion that "I cannot, therefore, conclude beyond a reasonable doubt that the confession did not affect the jury's verdict."

CONCLUSION

THE ORDER OF THE DISTRICT COURT
SHOULD BE IN ALL RESPECTS AFFIRMED,
AND THE STATE DIRECTED TO RETRY
PETITIONER FORTHWITH OR RELEASE
HIM FROM STATE CUSTODY

Dated: New York, New York
December 21, 1977

Respectfully submitted,

MARTIN E. GOTKIN
Attorney for Petitioner-
Appellee
(Assigned Counsel)

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NEW YORK CITY OFFICE
[Signature]
ATTORNEY GENERAL *[Signature]*

